



THE CALIFORNIA INSTITUTE OF TECHNOLOGY  
JET PROPULSION LABORATORY

GENERAL PROVISIONS (GPs) SET FOR:  
LABOR-HOUR/TIME-AND-MATERIAL  
SUBCONTRACT

(located at: <https://acquisition.jpl.nasa.gov/tc/>)

GOVERNMENT SUBCONTRACT	
<p><i>This Subcontract is entered into by the <b>Jet Propulsion Laboratory (JPL)</b> and the <b>Subcontractor</b> in support of a U.S. Government Contract. JPL is a Federally-Funded Research &amp; Development Center (FFRDC) per FAR 35.017, and is an operating division of the California Institute of Technology ("Caltech"), a private nonprofit educational institution.</i></p>	
<p><i>As used in the clauses referenced below and throughout this subcontract:</i></p> <ul style="list-style-type: none"><li>• FAR 52.202-1 (JAN 2012) "Definitions" is incorporated by reference.</li><li>• The term "JPL Subcontracts Manager" means a person with the authority to enter into, administer and/or terminate Subcontracts and make related determinations and findings.</li><li>• The following terms shall have the meaning set forth in FAR 2.101: "Agency head" (or "head of agency"), "commercial component," "component," "commercial item," and "nondevelopmental item."</li></ul>	

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## **ASSIGNMENT, NOVATION AND TRANSFER**

This Subcontract may be assigned, novated, or transferred to a successor-in-interest, a successor Contractor to operate the Jet Propulsion Laboratory, or the Government.

## **ASSIGNMENT OF RIGHTS**

- (a) The Subcontractor may assign its rights to be paid amounts due or to become because of this Subcontract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.
- (b) Any such assignment or reassignment shall be subject to the following conditions:
  - (1) Any assignment or reassignment shall cover all amounts payable under this Subcontract, and not paid as of (i) the effective date of assignment or (ii) the date JPL receives written notice of the assignment, whichever is later.
  - (2) No assignment may be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this Subcontract.
  - (3) Two copies of the notice of assignment, signed by the Subcontractor, shall be furnished to JPL, Attn: (i) Travel and Invoice Management Section, and (ii) JPL Subcontracts Manager.
  - (4) If a party other than the Subcontractor provides JPL with a notification that the amount due or to become due under this Subcontract has been assigned and that payment is made to the claimed assignee, JPL may withhold any payments due and payable under the Subcontract until JPL is furnished with either (i) verification or denial of assignment from the Subcontractor or (ii) reasonable proof that the assignment has been made.
  - (5) The Subcontractor shall not furnish or disclose to any assignee under this Subcontract any classified document (which term includes this Subcontract if access to classified material is authorized under this Subcontract) or information pertaining to classified work under this Subcontract unless JPL authorizes such action in writing.
  - (6) No assignment may be made which includes, either specifically or by implication, any delegation of the Subcontractor's duty to perform the services or provide the supplies required by this Subcontract unless such assignment and delegation is consented to by JPL in accordance with the clause "Delegation of Duties" below.

## **AUTHORITY OF JPL REPRESENTATIVES**

- (a) No request, notice, authorization, direction or order received by the Subcontractor and issued either pursuant to a clause of this Subcontract, to a clause of any document incorporated in this Subcontract by reference, or otherwise, shall be binding upon either the Subcontractor or JPL unless issued or ratified in writing by the JPL Subcontracts Manager, the JPL Acquisition Division Manager or by representative(s) designated in writing by either of them. Designations of authorized representatives shall define the scope and limitations of the authorized representatives' authorities.
- (b) The Subcontractor shall immediately notify, in writing, the JPL Subcontracts Manager whenever a request, notice, authorization, direction, or order has been received from a representative of JPL other than the JPL Subcontracts Manager which, but for the lack of authorization on the part of the issuing JPL representative, would: (i) effect a change within the meaning of the "Changes" clause; (ii) increase or decrease the Subcontract amount or amount allotted to this Subcontract; or (iii) otherwise be the basis for assertion of a claim by the Subcontractor under any clause of the Subcontract.

## **CHANGES – LABOR-HOUR/TIME-AND-MATERIAL**

- (a) JPL may at any time, by written unilateral modification, and without notice to the sureties, if any, make changes or issue directions within the general scope of this Subcontract in any one or more of the following:
  - (1) Description of services to be performed.

- (2) Time of performance (i.e., hours of the day, days of the week, etc.).
  - (3) Place of performance of the services.
  - (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for JPL in accordance with the drawings, designs, or specifications.
  - (5) Method of shipment or packing of supplies.
  - (6) Place of delivery.
  - (7) Amount of GFP.
- (b) If any change causes an increase or decrease in any hourly rate, the ceiling price, or the time required for performance of any part of the work under this Subcontract, whether or not changed by the modification, or otherwise affects any other provision of this Subcontract, JPL shall make an equitable adjustment in the (i) ceiling price, (ii) hourly rates, (iii) delivery or performance schedule, and (iv) other affected provisions, and shall modify the Subcontract accordingly.
  - (c) The Subcontractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the modification. However, if JPL decides that the facts justify it, JPL may receive and act upon a proposal submitted before final payment of the Subcontract.
  - (d) Except as provided in paragraph (e) below, nothing contained in this clause shall excuse the Subcontractor from proceeding with the Subcontract as changed.
  - (e) Notwithstanding the provisions of paragraphs (a) through (d) above, the ceiling price of this Subcontract shall not be increased or deemed to be increased except by specific written modification of the Subcontract indicating the new Subcontract ceiling price. Until such modification is made, the Subcontractor shall not be obligated to continue performance or incur costs beyond the point established in Paragraph (f) or (g) of the clause of this Subcontract entitled "Timekeeping and Payments."

#### **COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT**

*(Work performed outside the United States is exempt from the requirements of this clause.)*

- (a) Subcontractor agrees to comply with the Americans with Disabilities Act (42 U.S.C. 12101, et. Seq.) and all implementing regulations.
- (b) Subcontractor agrees that it will be responsible to the Government and JPL for, and will indemnify and hold harmless the Government and JPL, its trustees, officers, and employees from any loss, cost, damage, expense or liability or suit therefore, by reason of actual or alleged property damage or personal injury of whatever kind or character, arising out of, or in connection with performance of the requirements of Paragraph (a) above by the Subcontractor or any of its lower-tier subcontracts, however the same may be caused, excepting only such loss, cost, damage, expense or liability attributable to the sole or contributory active negligence of the Government or of JPL, its trustees, officers, or employees.
- (c) Subcontractor agrees to insert this provision, including this Paragraph (e), in all lower-tier subcontracts and purchase orders hereunder.

#### **DATA REMOVAL FROM COMPUTERS AND ELECTRONIC DEVICES**

The Subcontractor shall archive all data required to be retained pursuant to the terms of this Subcontract (including, but not limited to, the General Provisions, Additional General Provisions, Alterations to General Provisions and Special Provisions). The Subcontractor shall completely sanitize (e.g., overwrite, degauss or destroy) all media containing data in all computers and other electronic devices and permanently delete all non-transferable licensed software before such computers or other electronic devices leave the control of the Subcontractor by transfer or disposal. All data, including computer software, provided by JPL, derived from JPL data, or owned by the Government or JPL pursuant to this Subcontract shall be permanently deleted from Subcontractor controlled computers or electronic devices before leaving

the control of the Subcontractor. The Subcontractor shall submit to JPL a written certification that the above sanitization requirements have been satisfied and the date of such action

#### **DELEGATION OF DUTIES**

The Subcontractor is prohibited, without prior written JPL consent, from delegating any part of the duties required of it by this Subcontract; provided, however, that nothing contained herein shall be deemed to prohibit the Subcontractor from placing purchase orders and lower-tier subcontracts, subject, however, to the clause of this Subcontract entitled "Lower-tier Subcontracts." Delegation of duties without such consent is void.

#### **DISPUTES**

Any subcontract dispute which is not resolved by agreement of the parties may be settled by appropriate legal proceedings in a court of competent jurisdiction in the State of California. The Subcontractor shall proceed diligently with the performance of this subcontract during the litigation proceedings and any appeal.

#### **ELECTRICAL EQUIPMENT ACQUISITION**

*Applicable if: the Subcontract involves acquisition of off-the-shelf electrical equipment for delivery to or use by JPL or its designees.*

The electrical equipment being provided by the Subcontractor under this Subcontract shall be listed by Underwriters Laboratory, Factory Mutual Insurance Association, Canadian Standards Association, or similar organization of recognized standing. In the event that the equipment does not carry an appropriate approval, the individual components making up the item must be listed. Proof of listing shall be provided with delivery of the equipment in the form of accompanying data or labels. Any item not conforming to these requirements may be returned to the Subcontractor at the Subcontractor's expense. The Subcontractor agrees to require lower-tier subcontractors, if any, which supply electrical equipment for delivery to or use by JPL or its designees to comply with this clause.

#### **ELECTRONICALLY TRANSMITTED COPIES**

This Subcontract or modification(s) thereof may be executed in duplicate with each Party signing one original and providing a facsimile (fax) or other electronic copy of the signature page to the other Party. The Party receiving the electronically transmitted copy shall acknowledge receipt of the electronically submitted copy. Each Party agrees to make its document with the original signature available to the other Party upon request. The Parties further agree that the electronically transmitted copy shall be treated as if it were an original signature and neither Party shall contest the validity of this Subcontract or modification(s) based on the use of electronically transmitted copies of the signature page.

#### **EQUAL OPPORTUNITY**

**The Subcontractor and lower-tier subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.**

#### **EQUIPMENT (EXCLUDING VEHICLES), TOOLS AND MATERIAL (SUBCONTRACTOR PERSONNEL IN RESIDENCE AT JPL)**

*Applicable if: the Subcontract work will be performed at a JPL-controlled facility, and tools, equipment, or materials will be issued to the Subcontractor's personnel by JPL.*

- (a) Subcontractor personnel will not bring work items, i.e., tools, equipment (for example, personal computers and printers), or material, upon the premises while working at a JPL-controlled facility. JPL will provide those items necessary for performance of work at a JPL-controlled facility, and such items shall not be removed from the

premises unless removal from JPL premises is specifically authorized by the JPL Logistics and Material Services Section Manager or a designated representative. Items so provided shall not be considered "Government-Furnished Property," and will not be subject to the "Government Property" clause of this Subcontract, but will be issued to individual Subcontractor personnel. Subcontractor personnel will be held to the same standards of conduct regarding such Items as JPL employees:

- (b) Subcontractor personnel shall promptly notify their supervisor or the Cognizant JPL Technical Representative of any loss, damage, or destruction of Items issued to them.
- (c) The Subcontractor will be held liable for any loss, damage, or destruction of such Items resulting from gross negligence, willful misconduct, and unlawful appropriation by its personnel for personal use or benefit, or use for other than JPL business on the part of its personnel.
- (d) The Subcontractor agrees to inform its personnel who may work at a JPL- controlled facility of this procedure and of their responsibilities. JPL will advise the Subcontractor promptly upon determining that any Subcontractor personnel have failed to return or satisfactorily account for any Item issued to such personnel. The Subcontractor agrees that JPL may withhold from any monies due or to become due the Subcontractor under this Subcontract, or to otherwise reimburse JPL, the value of any Items issued to Subcontractor personnel and neither returned nor satisfactorily accounted for upon completion of work under this Subcontract or when so requested by JPL.

#### **FINAL PUBLISHED REPORT**

The Subcontractor shall submit, if applicable, the Subcontractor's Final Published Report to the JPL Subcontracts Manager. A Final Published Report may be for basic and applied scientific, technical, and related engineering research and development. The Subcontractor's Final Published Report shall: (i) indicate that the work is funded by NASA; (ii) be correctly marked to ensure appropriate dissemination; and (iii) be forwarded to the JPL Subcontracts Manager.

#### **GOVERNMENT-FURNISHED COMPUTER SOFTWARE AND RELATED TECHNICAL DATA**

- (a) *Definitions.* As used in this clause—

"Government-furnished computer software" or "GFCS" means computer software: (1) in the possession of, or directly acquired by, the Government whereby the Government has title or Government purpose license rights thereto; and (2) subsequently furnished to the Subcontractor for performance of a JPL Subcontract.

"Computer software," "data" and "technical data" have the meaning provided in the Federal Acquisition Regulation (FAR) Subpart 2.1- "Definitions," and the "Rights in Data—General" clause (FAR 52.227-14).

- (b) The Government through JPL will furnish to the Subcontractor the GFCS described in this Subcontract or in writing by the Government through the JPL Subcontracts Manager. The Government through JPL will furnish related technical data needed for the intended use of the GFCS.
- (c) Use of GFCS and related technical data. The Subcontractor shall use the GFCS and related technical data, and any modified or enhanced versions thereof, only for performing work under this Subcontract unless otherwise provided for in this Subcontract or approved by the JPL Subcontracts Manager.
  - (1) The Subcontractor shall not, without the express written permission of the Contracting Officer through the JPL Subcontracts Manager, reproduce, distribute copies, perform publicly, display publicly, release, or disclose the GFCS or related technical data to any person except for the performance of work under this Subcontract.
  - (2) The Subcontractor shall not modify or enhance the GFCS except as required pursuant to the performance of work under this Subcontract. If the GFCS is modified or enhanced pursuant to this Subcontract, the Subcontractor shall provide to JPL the complete source code, if any, of the modified or enhanced GFCS.
  - (3) Allocation of rights associated with any GFCS or related technical data modified or enhanced under this Subcontract shall be defined by the FAR "Rights in Data-General" clause.
  - (4) The Subcontractor may provide the GFCS, and any modified or enhanced versions thereof, to lower-tier subcontractors as required for the performance of work under this Subcontract. Before release of the GFCS, and any modified or enhanced versions thereof, to such Subcontractors (at any tier), the Subcontractor shall

insert, or require the insertion of, this clause, including this Paragraph (e)(4), suitably modified to identify the parties as follows: references to the Government are not changed, and in all references to the Subcontractor "lower-tier subcontractor" is substituted for the Subcontractor so that the lower-tier subcontractor has all rights and obligations of the Subcontractor in the clause.

- (d) The JPL Subcontracts Manager may by written notice, at any time—
  - (1) Increase or decrease the amount of GFCS under this Subcontract;
  - (2) Substitute other GFCS for the GFCS previously furnished, to be furnished, or to be acquired by the Subcontractor for JPL under this Subcontract;
  - (3) Withdraw authority to use the GFCS or related technical data; or
  - (4) Instruct the Subcontractor to return or dispose of the GFCS and related technical data.
- (e) *Title to or license rights in GFCS.* The Government shall retain title to or license rights in all GFCS. Title to or license rights in GFCS shall not be affected by its incorporation into or attachment to any data not owned by or licensed to JPL.
- (f) *Waiver of Claims and Indemnification.* The Subcontractor agrees to waive any and all claims against JPL and the Government, and shall indemnify and hold harmless the agents of the Government and JPL, and their employees from every claim or liability, including attorney's fees, court costs, and expenses, arising out of, or in any way related to, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure of the GFCS and related technical data by the Subcontractor or by any person to whom the Subcontractor has, without authorization, released or disclosed such GFCS or related technical data. JPL and the Government make no warranty with respect to the serviceability and/or suitability of the GFCS for Subcontract performance. In addition, equitable adjustments shall be made in accordance with the procedures of the "Changes" clause in the event of a delivery of Government-furnished computer software to the Subcontractor in a condition not suitable for its intended use.

## **HANDLING, PROTECTION AND RELEASE OF RESTRICTED INFORMATION**

### 1. Handling and Protection of Restricted Information

- (a) Definition. "Restricted information," as used in this clause, means recorded information, regardless of form or the media on which it may be recorded, the use and dissemination of which is restricted, and includes:
  - (1) Limited rights data;
  - (2) Restricted computer software;
  - (3) Information incidental to Subcontract administration, such as financial, administrative, cost or pricing, or management information that embody trade secrets or are commercial or financial and confidential or privileged;
  - (4) Information designated by the U.S. Government as Sensitive But Unclassified (SBU);
  - (5) Information that is marked JPL/Caltech Proprietary, Proposal Sensitive or Business Discreet;
  - (6) Design information or guidance as may be embodied in or derived from computer-aided engineering, computer-aided design, analysis models, manufacturing models, drawings or translations of any of the foregoing, regardless of whether such information or guidance is marked or unmarked; and
  - (7) Information obtained directly from JPL electronic resources, such as JPL computers, servers, networks, electronic libraries or document repositories, regardless of whether such information is marked or unmarked.
- (b) Restrictions on use and disclosure of restricted information. With regard to any restricted information to which the Subcontractor is given access, by or on behalf of NASA or JPL, in performance of this Subcontract that is either marked with a restrictive legend indicating that use and disclosure of the information is restricted or is specifically identified in this Subcontract or in writing by the JPL Subcontracts Manager as being subject to this clause, the Subcontractor agrees to:

- (1) Use such restricted information only for the purposes of performing the services specified in this Subcontract;
  - (2) Safeguard the restricted information from unauthorized use and disclosure;
  - (3) Allow access to the restricted information only to those employees and lower-tier subcontractors that need it to perform services under this Subcontract;
  - (4) Preclude access and disclosure of the restricted information to persons and entities outside of the Subcontractor's or its lower-tier subcontractor's organization(s);
  - (5) Inform employees who may require access to the restricted information about obligations to use it only to perform the services specified in this Subcontract and to safeguard it from unauthorized use and disclosure;
  - (6) Require that each employee that has access to restricted information complies with the obligations regarding restricted information included in this clause;
  - (7) Return or dispose of the restricted information, as NASA or JPL may direct, when the restricted information is no longer needed for performance of work under this Subcontract; and
  - (8) Maintain any restrictive markings on sensitive information coming into its possession and on any copies thereof.
- (c) Exceptions
- (1) The obligations and prohibitions of Paragraph (b) do not apply to restricted information which the Subcontractor can demonstrate to the JPL Subcontracts Manager—
    - (A) Was publicly available at the time of receipt by the Subcontractor or thereafter becomes publicly available without breach of this Subcontract;
    - (B) Was known to, in the possession of, or developed by or for the Subcontractor independently of the restricted information received from the JPL, and such knowledge, possession, or independent development can be shown;
    - (C) Was received by the Subcontractor from a party other than the owner of the restricted information, who has the authority to release the restricted information and did not require the Subcontractor to hold it in confidence; or
    - (D) Is released to or becomes available to a third party on an unrestricted basis from the owner of the restricted information, someone acting under the owner's control, or with the prior written approval of the owner.
  - (2) Under a valid order of a court or Government agency, the Subcontractor may release restricted information to which the Subcontractor is given access by or on behalf of NASA or JPL in performance of this Subcontract, provided that the Subcontractor provides prior written notice to the owner of the restricted information of such obligation and the opportunity to oppose such disclosure. The Subcontractor shall provide a copy of the notice to the JPL Subcontracts Manager.
- (d) In the event that restricted information provided to the Subcontractor by or on behalf of NASA or JPL includes a restrictive legend that the Subcontractor deems to be ambiguous or unauthorized, the Subcontractor must notify the JPL Subcontracts Manager of such condition. Notwithstanding such a notification, as long as the restrictive legend provides an indication that a restriction on use or disclosure was intended, the Subcontractor will treat the restricted information pursuant to the requirements of this clause unless otherwise directed in writing by the JPL Subcontracts Manager or the owner of the restricted information.
- (e) Other subcontractual restrictions on restricted information. This clause is subordinate to all other Subcontract clauses or requirements that specifically address the access, use, handling, protection or disclosure of information. If any restrictions or authorizations in this clause are inconsistent with a requirement of any other clause of this Subcontract, the requirement of the other clause shall take precedence over the requirement of this clause. Third party limited rights data and restricted computer software will be provided under this Subcontract only as authorized by the clause at 52.227–14, Rights in Data—General, Alternates II and III (as modified by 1852.227–14, if applicable). If the Subcontractor believes there is a conflict between this clause and another clause in this Subcontract regarding the access, use, handling, protection or disclosure of restricted information, the



Subcontractor must consult with the JPL Subcontracts Manager before taking subsequent actions under the other clause.

- (f) The JPL Subcontracts Manager may require the Subcontractor to demonstrate how it is complying with this Handling and Protection of Restricted Information clause.
- (g) Remedies. Recognizing that this Subcontract establishes a high standard of accountability and trust, the Subcontractor's breach of any of the conditions of this clause may provide grounds for the Government or JPL to pursue such remedies as may be permitted by law, regulation, or this Subcontract. Unauthorized uses or disclosures of sensitive information may result in termination of this Subcontract for default, in addition to any other rights and remedies available by law to the Government, JPL or other provider of sensitive information.
- (h) Unless otherwise specifically provided in this Subcontract, no warranty, express or implied, including without limitation any warranty of accuracy, utility, merchantability or of fitness for a particular purpose, is provided hereunder for any of the disclosed sensitive information.
- (i) The Subcontractor's obligations under this clause shall survive the expiration or termination of this Subcontract.

## 2. Release of Restricted Information

- (a) Definition. "Restricted information," as used in this clause, means recorded information, regardless of form or the media on which it may be recorded, the use and dissemination of which is restricted, and includes:
  - (1) Limited rights data;
  - (2) Restricted computer software;
  - (3) Information incidental to Subcontract administration, such as financial, administrative, cost or pricing, or management information that embody trade secrets or are commercial or financial and confidential or privileged;
  - (4) Information designated by the U.S. Government as Sensitive But Unclassified (SBU).
  - (5) Information that is marked JPL/Caltech Proprietary, Proposal Sensitive or Business Discreet;
  - (6) Design information or guidance as may be embodied in or derived from computer-aided engineering, computer-aided design, analysis models, manufacturing models, drawings or translations of any of the foregoing, regardless of whether such information or guidance is marked or unmarked; and
  - (7) Information obtained directly from JPL electronic resources, such as JPL computers, servers, networks, electronic libraries or document repositories, regardless of whether such information is marked or unmarked.
- (b) Subcontractors, as well as their lower-tier subcontractors and their individual employees, may require access to restricted information in the JPL's possession. The Subcontractor agrees that, where needed for the performance of a subcontract, JPL may release to the Subcontractor and to any of its lower-tier subcontractors, restricted information delivered during the course of this Subcontract. Additionally, offerors agree that restricted information submitted with their proposals may be provided to JPL service subcontractors that assist JPL with subcontract closeout. If suitably marked with a legend indicating that use and disclosure of restricted information is restricted or if the information falls under Paragraph 2.(a)(6) or Paragraph 2.(a)(7), such restricted information will be subject to the enumerated protections mandated by this clause. The Subcontractor's limited rights data and restricted computer software will be provided to other JPL subcontractors or their lower-tier subcontractors only as authorized by the clause at 52.227-14, Rights in Data-General, Alternates II and III (as modified by 1852.227-14, if applicable).
- (c) Unless the JPL Subcontracts Manager decides that reasonable grounds exist to challenge the markings, NASA, JPL, and its Subcontractors and lower-tier subcontractors, shall comply with all of the safeguards contained in Paragraph 2.(d) and Paragraph 1. of this clause.
- (d) To receive access to restricted information needed to assist NASA and JPL in accomplishing NASA mission activities and management and administrative functions, the Subcontractor and lower-tier subcontractors must be operating under a subcontract that contains this clause, which obligates the Subcontractor or lower-tier subcontractor, with respect to restricted information marked with a legend indicating that use and disclosure of the information is restricted, to do the following:

- (1) Use such restricted information only for the purpose of performing the services specified in its Subcontract;
  - (2) Safeguard such restricted information from unauthorized use and disclosure;
  - (3) Allow access to such restricted information only to those employees and Subcontractors that need it to perform services under the Subcontract;
  - (4) Preclude access and disclosure of such restricted information to persons and entities outside of the Subcontractor's or its lower-tier subcontractor's organization(s);
  - (5) Inform employees who may require access to such restricted information about obligations to use it only to perform the services specified in its Subcontract and to safeguard it from unauthorized use and disclosure;
  - (6) Require that each employee that has access to restricted information complies with the obligations regarding restricted information included in this clause; and
  - (7) Return or dispose of such restricted information, as NASA or JPL may direct, when the restricted information is no longer needed for performance of work under the Subcontract.
  - (8) Maintain any restrictive markings on sensitive information coming into its possession and on any copies thereof.
- (e) Exceptions. The obligations and prohibitions of Paragraph € of this clause do not apply to restricted information which the receiving Subcontractor can demonstrate to the JPL Subcontracts Manager –
- (1) Was publicly available at the time of receipt by the receiving Subcontractor or thereafter becomes publicly available without breach of this Subcontract;
  - (2) Was known to, in the possession of, or developed by or for the receiving Subcontractor independently of the restricted information received from the Government or JPL, and such knowledge, possession, or independent development can be shown;
  - (3) Was received by the receiving Subcontractor from a party other than the owner of the restricted information, who has the authority to release the restricted information and did not require the receiving Subcontractor to hold it in confidence;
  - (4) Is released to or becomes available to a third party on an unrestricted basis from the owner of the restricted information, someone acting under the owner's control, or with the prior written approval of the owner; or
  - (5) Is required to be released under a valid order of a court or Government agency, provided that the Subcontractor provides prior written notice to the owner of the restricted information of such obligation and the opportunity to oppose such disclosure.
- (f) Subcontractor personnel requiring privileged access or limited privileged access to JPL or NASA information technology systems that contain restricted information and that are the primary responsibility of another Subcontractor are subject to screening using the standard National Agency Check (NAC) forms appropriate to the level of risk for adverse impact to JPL or NASA missions. The JPL Subcontracts Manager may allow the Subcontractor to conduct its own screening, provided the Subcontractor employs substantially equivalent screening procedures.
- (g) This clause does not affect JPL's rights or NASA's responsibilities under the Freedom of Information Act.

### 3. Lower-tier subcontracts

The Subcontractor shall insert, or require the insertion of Paragraphs 1. and 2. Of this clause, including this Paragraph 3., suitably modified to reflect the relationship of the parties, in all lower-tier subcontracts (regardless of tier).

## INSPECTION – TIME AND MATERIAL AND LABOR-HOUR

(a) Definitions.

- (1) "Subcontractor's managerial personnel," as used in this clause, means any of the Subcontractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of:

(A) All or substantially all of the Subcontractor's business;

(B) All or substantially all of the Subcontractor's operation at any one plant or separate location at which the Subcontract is being performed; or

(C) A separate and complete major industrial operation connected with the performance of this Subcontract.

- (2) "Materials," as used in this clause, includes data when the Subcontract does not include the Warranty of Data clause.

(b) The Subcontractor shall provide and maintain an inspection system acceptable to JPL covering the material, fabricating methods, work, and services under this Subcontract. Complete records of all inspection work performed by the Subcontractor shall be maintained and made available to JPL during Subcontract performance and for as long afterwards as the Subcontract requires.

(c) JPL has the right to inspect and test all materials furnished and services performed under this Subcontract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. JPL, through any authorized representative, may also inspect the plant or plants of the Subcontractor or any Lower-tier subcontractor engaged in Subcontract performance. JPL shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If JPL performs inspection or test on the premises of the Subcontractor or a Lower-tier subcontractor, the Subcontractor shall furnish and shall require Lower-tier subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(e) Unless otherwise specified in the Subcontract, JPL shall accept or reject services and materials at the place of delivery as promptly as practicable after delivery, and they shall be presumed accepted 60 days after the date of delivery, unless accepted earlier.

(f) At any time during Subcontract performance, but not later than six months (or such other time as may be specified in the Schedule) after acceptance of the services or materials last delivered under this Subcontract, JPL may require the Subcontractor to replace or correct services or materials that at time of delivery failed to meet Subcontract requirements. Except as otherwise specified in paragraph (h) below, the cost of replacement or correction shall be determined under the "Timekeeping and Payments" clause of this Subcontract, but the "hourly rate" for labor hours incurred in the replacement or correction shall be reduced to exclude that portion of the rate attributable to profit. The Subcontractor shall not tender for acceptance materials and services required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.

(g) If the Subcontractor fails to proceed with reasonable promptness to perform required replacement or correction, and if the replacement or correction can be performed within the ceiling price (or ceiling price as increased by JPL), JPL may:

- (1) By Subcontract or otherwise, perform the replacement or correction, charge to the Subcontractor any increased cost, or deduct such increased cost from any amounts paid or due under this Subcontract (or require repayment of any payments theretofore made); or

(2) Terminate this Subcontract for default.

(h) Notwithstanding paragraphs (f) and (g) above, JPL may at any time require the Subcontractor to remedy by correction or replacement, without cost to JPL, any failure by the Subcontractor to comply with the requirements of this Subcontract, if the failure is due to (i) fraud, lack of good faith, or willful misconduct on the part of the Subcontractor's managerial personnel or (ii) the conduct of one or more of the Subcontractor's employees selected

or retained by the Subcontractor after any of the Subcontractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.

- (i) This clause applies in the same manner and to the same extent to corrected or replacement materials or services as to materials and services originally delivered under this Subcontract.
- (j) The Subcontractor has no obligation or liability under this Subcontract to correct or replace materials and services that at time of delivery do not meet Subcontract requirements, except as provided in this clause or as may be otherwise specified in the Subcontract.
- (k) Unless otherwise specified in the Schedule, the Subcontractor's obligation to correct or replace Government-furnished property shall be governed by the clause entitled "Government Property."
- (l) If this Subcontract, including those documents forming a part hereof by reference or incorporation, provides for or requires the submission of any of the work to JPL for approval, any such approval given by JPL, prior to final acceptance, shall not relieve the Subcontractor of its responsibility for complying with the specifications and other provisions of this Subcontract. Any such approval shall not be construed as an assumption by JPL of the responsibility that such work complies or will comply with the specifications or other provisions of this Subcontract.

## **INSURANCE AND INDEMNIFICATION**

- (a) This clause is applicable if:
  - (1) The performance of this Subcontract includes activities which could endanger non-Subcontractor personnel and such activities are performed at a location which is not secured by appropriate Subcontractor-controlled access restrictions; or
  - (2) This Subcontract requires work on a Government installation or premises under the control of JPL.
- (b) Insurance. The Subcontractor shall, at its own expense, provide and maintain during the entire performance period of this Subcontract at least the following kinds and minimum amounts of insurance with JPL named as an additional insured in all of its policies for comprehensive liability insurance with a carrier licensed and admitted in the State of California.
  - (1) Workers' Compensation and Employer's Liability Insurance, as required by applicable Federal and state workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the Employer's Liability section of the insurance policy, except when Subcontract operations are so commingled with the Subcontractor's commercial operations that it would not be practical. The Employer's Liability coverage shall be at least \$2,000,000, except in states with exclusive or monopolistic funds that do not permit worker's compensation to be written by private carriers. However, the Subcontractor in fulfillment of its obligation to provide Workers' Compensation Insurance may maintain a self-insurance program if the Subcontractor is qualified pursuant to statutory authority to do so.
  - (2) Comprehensive Liability Insurance, including automobiles (owned, non-owned, or leased), completed operations, products, and contractual liability, for a combined single limit of not less than \$2,000,000 for all deaths, injuries, and property damage arising from any accident or occurrence.
- (c) Insurance Certificates and Endorsements. Before commencing work under this Subcontract, the Subcontractor shall furnish (i) certificates of insurance for the coverages specified in paragraph (b) above, and (ii) an additional insured endorsement naming JPL as an additional insured to the Subcontract for the coverage specified in paragraph (b)(2) above. Such certificates and the endorsement shall provide that any cancellation or material change in the insurance policies shall not be effective (i) for such period as the laws of the State in which this Subcontract is to be performed prescribe, or (ii) until 30 days after the insurer or the Subcontractor gives written notice to JPL, whichever period is longer. Also, such certificates and the endorsement shall (i) cover contractual liability assumed under this Subcontract, and (ii) be primary and non-contributing to any insurance procured by JPL. The Subcontractor agrees to permit JPL to examine its original policies, should JPL so request. Should the Subcontractor at any time neglect or refuse to provide the insurance required herein, or should such insurance be canceled, JPL shall have the right to procure same and the costs thereof shall be deducted from monies then due or thereafter to become due to the Subcontractor.
- (d) Indemnification. The Subcontractor agrees that it will be responsible to the Government and JPL for, and will indemnify, immediately defend and hold harmless the Government and JPL, its trustees, officers, and employees,

from any loss, cost, damage, expense or liability, including attorney's fees, or any suit therefore, by reason of actual or alleged claims of any kind, including, but not limited to property damage or personal injury of whatever kind or character, arising out of or in connection with the performance of work hereunder by the Subcontractor or any of its lower-tier subcontractors, however caused, including any resulting from any alleged or actual negligent act or omission, regardless of whether such act or omission is active or passive, but excepting only a duty to indemnify to the extent such loss, cost, damage, expense or liability is attributable to the sole negligence or willful misconduct of the Government or of JPL, its trustees, officers or employees.

(e) Lower-tier subcontracts.

- (1) The Subcontractor shall insert the substance of this clause, including this paragraph (e), in any and all lower-tier subcontracts under this Subcontract if:
  - (A) The performance of the lower-tier subcontract includes activities which could endanger non-lower-tier subcontractor personnel and such activities are performed at a location which is not secured by appropriate lower-tier subcontractor-controlled access restrictions; or
  - (B) This lower-tier subcontract requires work on a Government installation or premises under the control of JPL.
- (2) At least five days before entry of each such lower-tier subcontractor's personnel on the Government installation or JPL-controlled premises, the Subcontractor shall furnish (or ensure that there has been furnished) to JPL a current certificate of insurance meeting the requirements of paragraph (c) above, for each such lower-tier subcontractor.

(f) This clause shall be interpreted pursuant to California law.

<b>LIMITATION ON RESTRICTIVE MARKINGS</b>
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- (a) Information delivered or otherwise provided by the Subcontractor to JPL in connection with this Subcontract shall not contain any Restrictive Markings, except as permitted by section (b) below or as required by law. As used in this clause, "Restrictive Markings" means any marking, legend or other indicia intended to limit use of the information. For example, "Restrictive Markings" may include, but are not limited to, "Proprietary," "Confidential," or substantially equivalent designation, as well as the Limited and Restricted Rights Notices that may be set forth in the "Rights in Data – General" clause of this Subcontract. Restrictive Markings not permitted by section (b) below impose no obligations or restrictions on JPL's use and disclosure of information, and, unless otherwise agreed in writing, JPL is entitled to disregard and/or remove such unpermitted Restrictive Markings on information in its possession at any time without notice to the Subcontractor.
- (b) The following Restrictive Markings shall be permitted under this Subcontract:
  - (1) The Limited Rights Notice permitted under ALT II, Paragraph (g)(3) of the "Rights In Data – General" clause, if included in this Subcontract.
  - (2) The Restricted Rights Notice permitted under ALT III, Paragraph (g)(4) of the "Rights in Data – General" clause, if included in this Subcontract.
  - (3) "Proprietary," "Confidential," or substantially equivalent designations may be included on Subcontractor's financial, administrative, cost, pricing or management information relating to the administration of this Subcontract. Any such Restrictive Markings should preferably identify the type of financial or administrative information, for example, "[SUBCONTRACTOR NAME] Proprietary Cost Information."
  - (4) Copyright notices to the extent permitted by Paragraph (e)(1) of the "Rights In Data – General" clause in this Subcontract.
- (c) JPL retains the right to challenge any Restrictive Markings identified in Paragraph (b) above. Challenges to such markings shall be made in accordance with the procedures set forth in Paragraph (e) of the "Rights in Data – General" clause in this Subcontract.
- (d) Where information contains both unrestricted and restricted data subject to the Restrictive Markings permitted in Paragraph (b) above, the Subcontractor shall mark only those pages, parts or portions of the information that are subject to restrictions permitted in Paragraph (b).

- (e) Upon the execution of this Subcontract, all prior confidentiality agreements between JPL and the Subcontractor relating to or otherwise encompassing the subject matter of this Subcontract are hereby terminated. The obligation to maintain confidentiality of any information disclosed pursuant to such agreements shall survive termination and continue for the nondisclosure period set forth therein or, if none is specified, for the term of this Subcontract. Notwithstanding the foregoing, should use of information previously delivered by Subcontractor to JPL under a confidentiality agreement be deemed necessary for the performance of this Subcontract, the Subcontractor must identify in writing to JPL which Restrictive Markings permitted in Paragraphs (b)(1)-(4) above apply, if any, within thirty (30) days of the execution of this Subcontract.

#### **LOWER-TIER SUBCONTRACTS**

- (a) JPL reserves the right to require submission of any lower-tier subcontract or purchase order, and related documentation, for advance consent; in such cases, JPL may, in its discretion, ratify in writing any lower-tier subcontract, and such ratification shall constitute consent.
- (b) The Subcontractor agrees that no lower-tier subcontract placed under this Subcontract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type lower-tier subcontracts shall not exceed the fee limitations in Part 15.404 of FAR and any corresponding implementing or supplementing clauses in the NFS, unless approved by JPL.
- (c) The Subcontractor shall give JPL immediate notice in writing of any action or suit filed and prompt notice of any claim made against the Subcontractor by any lower-tier subcontractor or supplier which, in the opinion of the Subcontractor, may result in litigation related in any way to this Subcontract with respect to which the Subcontractor may be entitled to reimbursement from JPL.
- (d) JPL may, in its discretion, specifically approve in writing any of the terms and conditions of a purchase order or lower-tier subcontract. However, such approval or the consent of JPL obtained as required by this clause shall not be construed to constitute a determination (i) of the acceptability of any lower-tier subcontract terms and conditions; (ii) of the allowability of any cost under this Subcontract; or (iii) to relieve the Subcontractor of any responsibility for performing this Subcontract.

#### **ORDER OF PRECEDENCE**

- (a) The rights and obligations of the parties of this Subcontract shall be subject to and governed by the Schedule, the General Provisions (the term "General Provisions" includes any "Additional General Provisions"), and any proposals, specifications or other documents or provisions which are made a part of this Subcontract by reference or otherwise.
- (b) To the extent of any inconsistency between (i) the Schedule, other than the Alterations Clause, (ii) the Alterations Clause in the Schedule, and (iii) the GPs, the inconsistency will be resolved in the following order of priority:
- (1) The Alterations Clause.
  - (2) The GPs not altered.
  - (3) The Schedule, other than the Alterations Clause.
- (c) To the extent of any inconsistency between:
- (1) The Schedule, other than any proposals, specifications or other documents or provisions which are made a part of this Subcontract by reference or otherwise, in the Schedule or the General Provisions, and
  - (2) Any proposals, specifications or other documents or clauses which are made a part of this Subcontract by reference or otherwise in the Schedule or the General Provisions,
- (3) (c)(1) has order of precedence over (c)(2).
- (d) All clauses of this Subcontract that are required by their terms to be included in lower-tier subcontracts shall be required by the Subcontractor to take precedence in the lower-tier subcontract over any other clauses.

## **PROHIBITION OF SUBCONTRACTOR USE OF PRIVATELY OWNED AIRCRAFT IN SUBCONTRACT PERFORMANCE**

The Subcontractor, its employees, agents and lower-tier subcontractors, shall not use privately owned (noncommercial) aircraft in the performance of this Subcontract without prior approval of the JPL Subcontracts Manager. Any request for approval to use privately owned aircraft must include a certificate of insurance as evidence that the Subcontractor has in effect Aircraft Liability Insurance coverage of not less than \$5,000,000 for all deaths, injuries, and property damage arising from one accident or occurrence. The Subcontractor shall be required as a condition of JPL's approval to submit an endorsement naming Caltech and JPL as an additional insured in such aircraft liability insurance policy. The Subcontractor shall include this clause in any lower-tier subcontract involving travel subject to JPL approval or requiring that the lower-tier subcontractor utilize a privately owned (noncommercial) aircraft.

## **RELEASE OF INFORMATION**

- (a) The Subcontractor agrees that all information released by the Subcontractor for publicity or promotional purposes (e.g., news and photo releases, exhibit copy, motion picture scripts, advertising copy) directly related to the Subcontractor's work with and for JPL will be submitted to JPL for review for technical accuracy prior to issuance. (See form JPL 1737, "Release of Information.")
- (b) The Subcontractor agrees to insert this clause including this Paragraph (b) in all lower-tier subcontracts.

## **REQUIRED NOTICES**

Unless otherwise specified in this Subcontract, any notice which the Subcontractor is required to provide to JPL under any clause of this Subcontract shall be directed to the JPL Subcontracts Manager or the Manager, Acquisition Division, JPL, or their authorized representatives.

## **RESTRICTIONS ON FUNDING ACTIVITY WITH CHINA**

- (a) Definition - "China" or "Chinese-owned company" means the People's Republic of China, any company owned by the People's Republic of China or any company incorporated under the laws of the People's Republic of China.
- (b) Public Laws 112-10, Section 1340(a) and 112-55, Section 539, restrict NASA from contracting to participate, collaborate, coordinate bilaterally in any way with China or a Chinese-owned company using funds appropriated on or after April 25, 2011. Subcontracts for commercial and non developmental items are exempted from the prohibition because they constitute purchase of goods or services that would not involve participation, collaboration, or coordination between the parties.
- (c) This Subcontract may use restricted funding that was appropriated on or after April 25, 2011. The Subcontractor shall not contract with China or Chinese-owned companies for any effort related to this Subcontract except for acquisition of commercial and non-developmental items. If the Subcontractor anticipates making an award to China or Chinese-owned companies, the Subcontractor must contact the Contracting Officer through the Subcontracts Manager to determine if funding on this Subcontract can be used for that purpose.
- (d) The Subcontractor represents that the Subcontractor is not China or a Chinese-owned company.
- (e) Lower-tier subcontracts - The Subcontractor shall include the substance of this clause in all lower-tier subcontracts made hereunder

## **SUBCONTRACTOR EMPLOYMENT OF JPL EMPLOYEES' CHILDREN AND RELATIVES (SUBCONTRACTOR'S EMPLOYEES IN RESIDENCE AT JPL)**

*Exemption: Work performed outside the United States is exempt from the requirements of this clause.*

- (a) When work under this Subcontract is to be performed at any JPL-controlled facility, the Subcontractor agrees to require applicants for such work, as part of the application process, to identify any relatives they know to be employed at JPL. The Subcontractor also agrees to notify the JPL Subcontracts Manager prior to hiring an applicant who so identifies a relative. The Subcontractor agrees to abide by JPL's determination as to whether the applicant may be assigned to work with a particular JPL organization.

- (b) The term "relatives" means parents, stepparents, grandparents, sisters, brothers, spouse/same-sex-domestic-partner, children, stepchildren, grandchildren, aunts, uncles, nieces, nephews, legal wards, and spouse's parents, grandparents, sisters and brothers.

#### **SUBCONTRACTOR RECRUITING ACTIVITY**

*(Does not apply if work performed outside the United States.)*

Except as may be specifically authorized by JPL in writing, during the performance of this Subcontract the Subcontractor shall refrain from engaging in any activity related to employment recruiting on any of the premises of JPL.

#### **TERMINATION – LABOR-HOUR/TIME AND MATERIAL**

- (a) JPL may terminate performance of work under this Subcontract in whole or, from time to time, in part, if:
- (1) JPL determines that a termination is in the interest of JPL or the Government.
  - (2) The Subcontractor defaults in performing this Subcontract and fails to cure the default within 10 days (unless extended by JPL) after receiving a JPL notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.
- (b) JPL shall terminate by delivering to the Subcontractor a Notice of Termination specifying whether termination is for default of the Subcontractor or for convenience of JPL or the Government, the extent of termination, and the effective date. If, after termination for default, it is determined that the Subcontractor was not in default or that the Subcontractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Subcontractor as set forth in the clause of this Subcontract entitled "Excusable Delays," the rights and obligations of the parties will be the same as if the termination was for the convenience of JPL or the Government.
- (c) After receipt of a Notice of Termination, and except as directed by JPL, the Subcontractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
- (1) Stop work as specified in the notice.
  - (2) Place no further lower-tier subcontracts or orders (referred to as lower-tier subcontracts in this clause), except as necessary to complete the continued portion of the Subcontract.
  - (3) Terminate all lower-tier subcontracts to the extent they relate to the work terminated.
  - (4) Assign to JPL, in the manner and to the extent directed by JPL, all right, title, and interest of the Subcontractor under the lower-tier subcontracts terminated, in which case JPL shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
  - (5) With approval or ratification to the extent required by JPL, settle all outstanding liabilities and termination settlement proposals arising from the termination of lower-tier subcontracts, the cost of which would be reimbursable in whole or in part, under this Subcontract; approval or ratification will be final for purposes of this clause.
  - (6) Transfer title (if not already transferred) and, as directed by JPL, deliver to JPL (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, (ii) the completed or partially completed plans, drawings, information, and other property that, if the Subcontract had been completed, would be required to be furnished to JPL, and (iii) the jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this Subcontract, the cost of which the Subcontractor has been or will be reimbursed under this Subcontract.
  - (7) Complete performance of the work not terminated.



- (8) Take any action that may be necessary, or that JPL may direct, for the protection and preservation of the property related to this Subcontract that is in the possession of the Subcontractor and in which the Government has or may acquire an interest.
- (9) Use its best efforts to sell, as directed or authorized by JPL, any property of the types referred to in subparagraph (6) above; provided, however, that the Subcontractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, JPL. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by JPL under this Subcontract, credited to the price or cost of the work, or paid in any other manner directed by JPL.
- (d) The Subcontractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Subcontractor within this 120-day period.
- (e) After expiration of the plant clearance period as defined in Subpart 45.6 of FAR and any corresponding implementing or supplementing provisions in the NFS, the Subcontractor may submit to JPL a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by JPL. The Subcontractor may request JPL to remove those items or enter into an agreement for their storage. Within 15 days, JPL will accept the items and remove them or enter into a storage agreement. JPL may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.
- (f) After termination, the Subcontractor shall submit a final termination settlement proposal to JPL in the form and with the certification prescribed by JPL. The Subcontractor shall submit the proposal promptly, but no later than six months from the effective date of termination, unless extended in writing by JPL upon written request of the Subcontractor within this six-month period. However, if JPL determines that the facts justify it, a termination settlement proposal may be received and acted on after six months or any extension. If the Subcontractor fails to submit the proposal within the time allowed, JPL may determine, on the basis of information available, the amount, if any, due the Subcontractor because of the termination and shall pay the amount determined.
- (g) Subject to paragraph (f) above, the Subcontractor and JPL may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The Subcontract shall be amended, and the Subcontractor paid the agreed amount.
- (h) If the Subcontractor and JPL fail to agree in whole or in part on the amount to be paid because of the termination of work, JPL shall determine, on the basis of information available, the amount, if any, due the Subcontractor, and shall pay the amount determined as follows:
  - (1) If the termination is for the convenience of JPL, include:
    - (A) An amount for direct labor hours (as defined in the Schedule of the Subcontract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the Schedule, less any hourly rate payments already made to the Subcontractor;
    - (B) An amount (computed under the provisions for payment of materials or other direct costs) for material expenses or other direct costs incurred before the effective date of termination, not previously paid to the Subcontractor;
    - (C) An amount for labor and material expenses and other direct costs computed as if the expenses were incurred before the effective date of termination if they are reasonably incurred after the effective date, with the approval of or as directed by JPL; however, the Subcontractor shall discontinue these expenses as rapidly as practicable;
    - (D) If not included in (A), (B), or (C) above, the cost of settling and paying termination settlement proposals under terminated lower-tier subcontracts that are properly chargeable to the terminated portion of the Subcontract; and
    - (E) The reasonable costs of settlement of the work terminated, including:

- (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
  - (ii) The termination and settlement of lower-tier subcontracts (excluding the amounts of such settlements); and
  - (i) Storage, transportation, and other costs incurred, reasonably necessary for the protection or disposition of the termination inventory.
- (2) If the termination is for default of the Subcontractor, include the amounts computed under (1) above but omit:
  - (A) Any amount for preparation of the Subcontractor's termination settlement proposal; and
  - (B) The portion of the hourly rate allocable to profit for any direct labor hours expended in furnishing materials and services not delivered to and accepted by JPL.
- (i) The cost principles and procedures in Part 31 of the FAR and any corresponding implementing or supplementing provisions in the NFS, in effect on the date of this Subcontract, shall govern all costs claimed, agreed to, or determined under this clause.
- (j) The determination by JPL of the amount, if any, due the Subcontractor by reason of the termination of this Subcontract, as provided in Paragraphs (f) or (h) above or Paragraph (k) below of this clause, shall not be final and conclusive with regard to the Subcontractor's right to pursue any available legal remedy in the event the Subcontractor disagrees with such determination, provided that, if the Subcontractor has failed to submit its claim within the time provided in Paragraph (f) above, and has failed to request an extension of such time, the determination of JPL as to the amount due shall be final and conclusive.
- (k) In arriving at the amount due the Subcontractor under this clause, there shall be deducted:
  - (1) All unliquidated advance or other payments to the Subcontractor, under the terminated portion of this Subcontract;
  - (2) Any claim which JPL has against the Subcontractor under this Subcontract; and
  - (3) The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Subcontractor or sold under this clause and not recovered by or credited to JPL.
- (l) If the termination is partial, the Subcontractor may file with JPL a proposal for an equitable adjustment of the price(s) for the continued portion of the Subcontract. JPL shall make any equitable adjustment agreed upon. Any proposal by the Subcontractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination, unless extended in writing by JPL.
- (m)
  - (1) JPL may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Subcontractor for the terminated portion of the Subcontract, if JPL believes the total of these payments will not exceed the amount to which the Subcontractor will be entitled.
  - (2) If the total payments exceed the amount finally determined to be due, the Subcontractor shall repay the excess to JPL upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Subcontractor to the date the excess is repaid to JPL. Interest shall not be charged on any excess payment due to a reduction in the Subcontractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by JPL because of the circumstances.

#### **TIMEKEEPING AND PAYMENTS**

- (a) General. The Subcontractor shall submit invoices to JPL as indicated in the Schedule and discussed below. Payment to the Subcontractor for hours worked by the Subcontractor employees listed in the Schedule (or

Subcontract Work Order) (or if there is no listing of personnel by name in the Schedule, then by personnel of the classification listed in the Schedule) will be based on the actual hours worked by such personnel in accordance with paragraph (b) below. Reimbursement of the Subcontractor for travel and related expenses or allowances shall be allowable only if stated in the Schedule and shall be subject to the provisions below.

(b) Timekeeping.

- (1) For work to be performed for JPL at a JPL location, the Subcontractor is responsible for accurately tracking and recording the hours and days of the workweek and the hours of the workshift that are worked by its employees. Working time will be calculated in tenth-of-an-hour increments for each full six minutes beginning with the designated or approved shift starting time or the actual starting time, whichever is later. Mealtime deductions shall be appropriately determined by the Subcontractor. The Subcontractor is responsible for establishing a process that monitors its personnel leaving JPL premises during the workday.
- (2) For work performed at a location other than JPL, the Subcontractor is responsible for accurately tracking and recording the hours and days of the workweek and the hours of the work shift that are worked by its employees. Unless otherwise provided for in this Subcontract, the Subcontractor shall maintain timekeeping records in accordance with form JPL 1725, "Minimum Timekeeping Requirements for Labor-Hour Type Procurements to be Performed at Off-Lab Facilities."
- (3) Overtime is defined as work performed in excess of eight hours in one day or forty hours in one workweek or in accordance with applicable State and Federal Laws and Regulations.

(c) Hourly Rate.

- (1) Hourly rate means the rate(s) prescribed in the Subcontract for payment for labor that meets the labor category qualifications of a labor category specified in the Subcontract that are-
  - (A) Performed by the Subcontractor;
  - (B) Performed by lower-tier subcontractors; or
  - (C) Transferred between divisions, subsidiaries, or affiliates of the Subcontractor under a common control.
- (2) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the Schedule or Subcontract Work Order by the number of direct labor hours performed. Working time shall be calculated in tenth-of-an-hour increments for each full six minutes beginning with the designated or approved shift starting time or the actual starting time. Mealtime deductions will be as determined by the Subcontractor. At the end of the day, working time shall not be computed beyond the end of the designated approved shift unless overtime is authorized. Invoices shall be submitted weekly, (unless another interval is specified in the Schedule) to the attention of the JPL Travel Invoice Management Section. Invoices shall contain the accuracy representation as required by JPL, and shall be submitted by one of the authorized representatives specified in the Schedule. Promptly after receipt of each invoice, JPL will, except as otherwise provided in this Subcontract, and subject to the terms of (g) below, pay the invoice as approved by JPL.
- (3) The hourly rates will be paid for all labor performed on the Subcontract that meets the labor qualifications specified in the Subcontract. Labor hours incurred to perform tasks for which labor qualifications were specified in the Subcontract will not be paid to the extent the work is performed by employees that do not meet the qualifications specified in the Subcontract, unless specifically authorized by the Subcontracts Manager.
- (4) The hourly rates shall include wages, indirect costs, general and administrative expense, and profit. Fractional parts of an hour shall be payable.
- (5) Unless otherwise prescribed in the Schedule, JPL will withhold five percent of the amounts due under this Subcontract, or such other amount that JPL considers necessary to protect the interest of JPL and the Government, but the total amount withheld will not exceed \$50,000. The amounts withheld will be retained until the execution and delivery of a release by the Subcontractor as provided in paragraph (h) below.
- (6) Unless the Schedule prescribes otherwise, the hourly rates in the Schedule shall not be varied by virtue of the Subcontractor having performed work on an overtime basis. If the Schedule or Subcontract Work Order provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by JPL.

(d) Materials.

(1) For purposes of this clause-

(A) *Direct materials* means those materials that enter directly into the end product, or that are used or consumed directly in connection with the furnishing of the end product or service.

(B) *Materials* means—

- (i) Direct materials, including supplies transferred between divisions, subsidiaries, or affiliates of the Subcontractor under a common control;
- (ii) Subcontracts for supplies and incidental services for which there is not a labor category specified in the Subcontract;
- (iii) Other direct costs (e.g., incidental services for which there is not a labor category specified in the Subcontract, travel, computer usage charges, etc.); and
- (ii) Applicable indirect costs.

(2) If the Subcontractor furnishes its own materials that meet the definition of commercial item at FAR 2.101, the price to be paid for such materials shall not exceed the Subcontractor's established catalog or market price, adjusted to reflect the:

(A) Quantities being acquired; and

(B) Actual cost of any modifications necessary because of Subcontract requirements;

(3) Except as provided for in paragraph (d)(2) of this clause, JPL will reimburse the Subcontractor for allowable cost of materials provided the Subcontractor-

(A) Has made payments for materials in accordance with the terms and conditions of the agreement or invoice; or

(B) Ordinarily makes these payments within 30 days of the submission of the Subcontractor's payment request to JPL and such payment is in accordance with the terms and conditions of the agreement or invoice.

(4) Payment for materials is subject to the Allowable Cost and Payment Clause of this Subcontract. JPL will determine allowable costs of materials in accordance with Subpart 31.2 of FAR in effect on the date of this Subcontract and any corresponding implementing or supplementing provisions in the NFS.

(5) The Subcontractor may include allocable indirect costs and other direct costs to the extent they are-

(A) Comprised only of costs that are clearly excluded from the hourly rate;

(B) Allocated in accordance with the Subcontractor's written or established accounting practices; and

(C) Indirect costs are not applied to Subcontracts that are paid at the hourly rates.

(6) To the extent able, the Subcontractor shall-

(A) Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and

(B) Take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of the benefits, the Subcontractor shall promptly notify the Subcontracts Manager and give reasons. The Subcontractor shall give credit to JPL for cash and trade discounts, rebates, scrap, commission, and other amounts that have accrued to the benefit of the Subcontractor; or would have accrued except for the fault or negligence of the Subcontractor. The Subcontractor shall not deduct from gross costs the benefits lost without fault or neglect on the part of the Subcontractors or lost through fault of JPL.

- (7) Except as provided for in FAR 31.205-26(e) and (f), JPL will not pay profit or fee to the Subcontractor on materials.
- (8)
- (A) JPL will reimburse the Subcontractor for costs of lower-tier subcontracts that are authorized under the lower-tier subcontracts clause of this Subcontract, provided that the costs are consistent with paragraph (d)(6) of this clause.
- (B) JPL will limit reimbursable costs in connection with lower-tier subcontracts to the amounts paid for supplies and services purchased directly for the Subcontract when the Subcontractor has made or will make payments determined due of cash, checks, or other forms of payment to the lower-tier subcontractor:
- (i) In accordance with the terms and conditions of a lower-tier subcontract or invoice; and
- (ii) Ordinarily within 30 days of the submission of the Subcontractor's payment request to JPL.
- (C) JPL will not reimburse the Subcontractor for any costs arising from the letting, administration, or supervision of performance of the lower-tier subcontract, if the costs are included in the hourly rates payable under paragraph (c)(2) of this clause.
- (e) Total Cost. It is estimated that the total cost to JPL for the performance of this Subcontract shall not exceed the ceiling price set forth in the Schedule and the Subcontractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this Subcontract within such ceiling price. If at any time the Subcontractor has reason to believe that the hourly rate payments and material costs that will accrue in performing this Subcontract in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 85% of the ceiling price in the Schedule, the Subcontractor shall notify JPL, giving a revised estimate of the total price to JPL for performing this Subcontract with supporting reasons and documentation. If at any time during performance of this Subcontract, the Subcontractor has reason to believe that the total price to JPL for performing this Subcontract will be substantially greater or less than the then stated ceiling price, the Subcontractor shall so notify JPL, giving a revised estimate of the total price for performing this Subcontract, with supporting reasons and documentation. If at any time during performance of this Subcontract, JPL has reason to believe that the work to be required in performing this Subcontract will be substantially greater or less than the stated ceiling price, JPL will so advise the Subcontractor, giving the then revised estimate of the total amount of effort to be required under the Subcontract.
- (f) Ceiling Price. JPL will not be obligated to pay the Subcontractor any amount in excess of the ceiling price in the Schedule, unless and until JPL notifies the Subcontractor in writing that the ceiling price has been increased and specifies in the notice a revised ceiling that shall constitute the ceiling price for performance under this Subcontract. When and to the extent that the ceiling price set forth in the Schedule has been increased, any hours expended and material costs incurred by the Subcontractor in excess of the ceiling price before the increase shall be allowable to the same extent as if the hours expended and material or other direct costs had been incurred after the increase in the ceiling price. Directions, orders, notices, requests and the like issued by JPL pursuant to the "Changes" Clause or any other provision of this Subcontract shall not be considered an authorization to the Subcontractor to exceed the ceiling price set forth in the Schedule in the absence of a statement in a Unilateral Modification, or other Subcontract modification, increasing the ceiling price.
- (g) Audit. At any time before final payment under this Subcontract, JPL may audit or have audited the invoices and supporting documentation. Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices that are found by JPL not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. Upon receipt and approval of the invoice designated by the Subcontractor as the "completion invoice" and supporting documentation, and upon compliance by the Subcontractor with all terms of this Subcontract (including, without limitation, terms relating to patents and terms of paragraphs (h) below), JPL will promptly pay any balance due the Subcontractor. The completion invoice and supporting documentation, shall be submitted by the Subcontractor as promptly as practicable following completion of the work under this Subcontract, but in no event later than six months (or such longer period as JPL may approve in writing) from the date of completion.
- (h) Assignment and Release of Claims. The Subcontractor, and each assignee under an assignment entered into under this Subcontract and in effect at the time of final payment under this Subcontract, shall execute and deliver, at the time of and as a condition precedent to final payment under this Subcontract, a release discharging JPL, its

officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this Subcontract, subject only to the following exceptions:

- (1) Specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible of exact statement by the Subcontractor.
  - (2) Claims, together with reasonable incidental expenses, based upon the liabilities of the Subcontractor to third parties arising out of performing this Subcontract, that are not known to the Subcontractor on the date of the execution of the release, and of which the Subcontractor gives notice in writing to JPL not more than six years after the date of the release or the date of any notice to the Subcontractor that JPL is prepared to make final payment, whichever is earlier.
  - (3) Claims for reimbursement of costs (other than expenses of the Subcontractor by reason of its indemnification of JPL or the Government against patent liability), including reasonable incidental expenses, incurred by the Subcontractor under the terms of this Subcontract relating to patents.
- (i) Refunds. The Subcontractor agrees that any refunds, rebates, or credits (including any related interest) accruing to or received by the Subcontractor or any assignee, that arise under the materials or other direct costs portion of this Subcontract and for which the Subcontractor has received reimbursement, shall be paid by the Subcontractor to JPL. The Subcontractor and each assignee, under an assignment entered into under this Subcontract and in effect at the time of final payment under this Subcontract, shall execute and deliver, at the time of and as a condition precedent to final payment under this Subcontract, an assignment to JPL of such refunds, rebates, or credits (including any interest) in form and substance satisfactory to JPL.
  - (j) Interim Payments. Interim payments for Subcontract financing will be made on the 30<sup>th</sup> day after JPL receives a proper payment request. In the event that JPL requires an audit or other review of a specific payment request to ensure compliance with the terms and conditions of the Subcontract, JPL is not compelled to make payment by the specified due date.
  - (k) If this is a labor-hour Subcontract, the terms of this clause that govern reimbursement for materials furnished are considered to have been deleted.

#### UNION DATA FOR ON-SITE SUBCONTRACTORS

*Applicable to: [i] to any time-and-material or labor-hour Subcontract where the work is performed at a JPL-controlled facility and [ii] to any other Subcontract for which any Subcontractor personnel work in residence at a JPL-controlled facility. Work performed outside the United States is exempt from the requirements of this clause.)*

- (a) The Subcontractor shall provide JPL-requested union information, including union information pertaining to its lower-tier subcontractors, if any, on the "Request for Union Data Regarding On-Site Subcontractors and their lower-tier subcontractors," set forth below. A copy of this form (sample shown below), filled in, shall be returned to the cognizant JPL Subcontracts Manager's attention. Any changes in the data, such as the addition of a new union lower-tier subcontractor, shall be provided to JPL through timely resubmission of the following form:

#### REQUEST FOR UNION DATA REGARDING ON-SITE SUBCONTRACTORS AND THEIR LOWER-TIER SUBCONTRACTORS

1. Date:
2. Subcontract number:
3. Scheduled Subcontract completion date:
4. Subcontractor name:
5. Total number of on-site personnel:
6. Cognizant Subcontracts Manager:
7. Lower-tier subcontractors under this Subcontract with union personnel working on-site at JPL-controlled facilities.

Number of Lower-tier Subcontractor Personnel at JPL Site:

Lower-tier Subcontractor : Total Personnel: No. of Union Personnel:

8. Brief description of scope of work and location of work site sufficient to locate the union Subcontract and lower-tier subcontract workers.
9.
  - a. Local union name: \_\_\_\_\_ Local No. (if any): \_\_\_\_\_
  - b. Number of on-site Subcontractor/lower-tier subcontractor personnel represented: \_\_\_\_\_
  - c. Name, phone number and address of business agent representing the local union:
    - (1) Name: \_\_\_\_\_
    - (2) Phone: \_\_\_\_\_
    - (3) Address: \_\_\_\_\_
  - d. Expiration date of labor agreement: \_\_\_\_\_
  - e.
    - (1) If applicable, the employer association responsible for negotiating each agreement for Subcontractor/lower-tier subcontractor: \_\_\_\_\_
    - (2) If applicable, the names of Subcontractor's/lower-tier subcontractor's local employer representatives who take part in such negotiations: \_\_\_\_\_
10. Name, phone number and address of the Subcontractor's Lower-tier Subcontractor's representative who is responsible for handling labor relations/human resources issues:
  - a. Name: \_\_\_\_\_
  - b. Phone: \_\_\_\_\_
  - c. Address: \_\_\_\_\_

(Note: For items 8., 9., and 10., provide for each union and also for each on-site lower-tier subcontract, as applicable.)

## SECTION B

### The Federal Acquisition Regulation (FAR) and NASA FAR Supplement (NFS) clauses on the following pages are incorporated by reference with the same force and effect as if they were given in full text

The FAR/NFS clauses listed below shall be suitably revised to identify the contracting and other parties to address the proper intent of the clause, except as shown in the notes associated with the clause. The following guidelines help illustrate:

- “contract” means “subcontract”
- “contractor” means “subcontractor”
- “subcontract” means “lower-tier subcontract”
- “subcontractor” means “lower-tier subcontractor”
- “Contracting Officer” means “JPL Subcontracts Manager”
- “Government” means “JPL”

As an exception to the above, the terms “Government” and “Contracting Officer” do not change when a right, act, authorization or obligation can be granted or performed only by the Government or Contracting Officer or his/her duly-authorized representative.

Unless otherwise noted below, the following terms are to remain unchanged: “U.S.,” United States,” “U.S. Government,” “United States Government,” “Federal,” and “Federal Government”

FAR and NFS Clauses Incorporated into this Subcontract by Reference (all references are FAR Clauses, unless preceded by “NFS”)	
Reference	Title and Date
Applicable for all Subcontract Dollar Values	
52.211-5	<b>Material Requirements (Aug 2000)</b> <i>Note 1: The term “Government” means “Government.”</i>
52.222-1	<b>Notice to the Government of Labor Disputes (Feb 1997)</b>
52.222-50	<b>Combating Trafficking in Persons (Feb 2009)</b> <i>Note 1: “Government” means Government.</i>
52.222-54	<b>Employment Eligibility Verification (Jan 2009)</b> <i>(Applies: only when subcontractor or lower-tier subcontractor is required to have physical access to a federally-controlled facility or access to a federal information system.)</i>  <i>Note 1: “Government” means Government.</i> <i>Note 2: Delete ¶ (e) and replace with: “The Subcontractor shall include the requirements of this clause, including this Paragraph (e) (appropriately modified for identification of the parties), in each lower-tier subcontract when a lower-tier subcontractor is required to have physical access to a federally-controlled facility or access to a federal information system.”</i>
52.223-2	<b>Affirmative Procurement of Biobased Products Under Service and Construction Contracts (Dec 2007)</b> <i>(Applies to subcontracts for services or construction, unless the subcontract will not involve the use of USDA-designated items at <a href="http://www.biopreferred.gov">http://www.biopreferred.gov</a> or 7 CFR part 3201)</i>  <i>Note 1: ¶ (b) - replace <a href="http://www.usda.gov/biopreferred">http://www.usda.gov/biopreferred</a> with <a href="http://www.biopreferred.gov">http://www.biopreferred.gov</a>.</i>
52.223-3	<b>Hazardous Materials Identification and Material Safety Data (Jan 1997)</b> <i>Note 1: Applies if the Subcontract will require the delivery of hazardous materials as defined in FAR 23.301.</i> <i>Note 2: ALT 1 (July 1995) applies.</i>



52.223-7	<b>Notice of Radioactive Materials</b> (Jan 1997) <i>Note 1: Applies if subcontract is for radioactive materials, as defined in the clause.</i> <i>Note 2: Add to paragraph (a): "30 days"</i>
52.223-11	<b>Ozone-Depleting Substances</b> (May 2001) <i>Note 1: Applies to subcontracts for ozone-depleting substances or for supplies that may contain or be manufactured with ozone-depleting substances.</i> <i>Note 2: "Ozone-depleting substances" is defined in the clause.</i>
52.223-12	<b>Refrigeration Equipment and Air Conditioners</b> (May 1995) <i>Note 1: Applies to services when the subcontract includes the maintenance, repair, or disposal of any equipment or appliance using ozone-depleting substances as a refrigerant, such as an air conditioners, including motor vehicles, refrigerators, chillers, or freezers.</i>
52.223-15	<b>Energy Efficiency in Energy Consuming Products</b> (Dec 2007)
52.223-17	<b>Affirmative Procurement EPA-Designated Items in Service and Construction Contracts</b> (May 2008) <i>(Applies to subcontracts for services or construction, unless the subcontract will not involve the use of EPA-designated items.)</i>
52.225-13	<b>Restrictions on Certain Foreign Purchases</b> (June 2008)
52.227-14	<b>Rights in Data – General</b> (Dec 2007) <i>Note 1: ALT II (Dec 2007), ALT III (Dec 2007) and ALT V (Dec. 2007) are incorporated.</i>  <i>Note 2: "Government" means Government, unless otherwise stated in these notes for 52.227-14.</i>  <i>Note 3: "Contracting Officer" means "Contracting Officer through JPL."</i>  <i>Note 4: ¶ (b), (c)(1)(iii), (c)(2)(ii) and (c)(3) - "Government" means the "Government and JPL/Caltech in support and furtherance of its obligations."</i>  <i>Note 5: ¶ (c)(1)(ii) - after "acknowledgment of Government sponsorship (including contract number)" insert:          "This work was performed for the Jet Propulsion Laboratory, California Institute of Technology, sponsored by the United States Government under the Prime Contract NNN12AA01C between the Caltech and NASA under subcontract number (insert subcontract number)."</i>  <i>Note 6: ¶ (g)(3)(a) of ALT II and (g)(4) of ALT III – After "Government Contract No.," insert "NNN12AA01C," and after "Subcontract" insert the subcontract number of this Subcontract.</i>  <i>Note 7: ¶ (g)(3)(a) of ALT II, after the last sentence, insert:          (i) Use (except for manufacture) by support service contractors.          (ii) Reserved.          (iii) Use (except for manufacture) by other contractors participating in the Government's program of which the specific contract is a part.</i>  <i>Note 8: Communications/notifications required under this clause from the Subcontractor to the Contracting Officer shall be through the JPL Subcontracts Manager.</i>
52.227-23	<b>Rights to Proposal Data (Technical)</b> (June 1987) <i>Note 1: Insert applicable pages, if any, after "contained on pages."</i> <i>Note 2: Insert date after "proposal dated."</i>
52.244-6	<b>Subcontracts for Commercial Items</b> (Dec 2010)
52.245-1	<b>Government Property</b> (Apr 2012) <i>Note 1: "Government" is unchanged in the phrases "Government Property," "Government-furnished," "Government-furnished property," "Government Material," &amp; "Government-owned."</i>  <i>Note 2: "Government" means "Government" in the following: ¶ (a), (e)(1), (e)(2) (first occurrence), (e)(3)(i), (e)(3)(ii)(first occurrence), (f)(2), (j)(except (j)(6)(i), &amp; (m).</i>  <i>Note 3: "Government" means "JPL and the Government" in the following: ¶ (g), (h), (j)(6)(i), &amp; (k)(4).</i>  <i>Note 4: ¶ (a) - "agency" means "JPL."</i>

	<p>Note 5: "Termination Contracting Officer" means "JPL Subcontracts Manager."</p> <p>Note 6: "Government means "Government through JPL" in ¶(k)(1),(2) &amp; (3).</p> <p>Note 7: "Government contract" means "Government contract or subcontract" in ¶(j)(6)(i).</p>
52.245-9	<p><b>Use and Charges</b> (Apr 2012)</p> <p>Note 1: "Contracting Officer" means "Contracting Officer through the JPL Subcontracts Manager."</p> <p>Note 2: "Administrative Contracting Officer" means "Administrative Contracting Officer through the JPL Subcontracts Manager."</p>
52.247-64	<p><b>Preference for Privately Owned U.S. Flag Commercial Vessels</b> (Feb 2006)</p> <p>Note 1: "Government" means "Government."</p> <p>Note 2: ¶(c)(1)(i) – "Contracting Officer" means "Contracting Officer through the JPL Subcontracts Manager."</p> <p>Note 3: ¶(c)(2)(A) - "Sponsoring United States Government Agency" is to be preceded by the words "NASA shown as."</p>
52.249-14	<p><b>Excusable Delays</b> (Apr 1984)</p> <p>Note 1: ¶(a) - "Government" means "Government."</p>
NFS: 1852.208-81	<p><b>Restrictions on Printing and Duplicating</b> (Nov 2004)</p> <p>Note 1: The terms "documentation" referred to in paragraph (a), "printing" referred to in paragraph (b), and "production units" referred to in paragraph (c) pertain solely to "Government publications." "Government publications" is defined as: (1) reports intended primarily for internal use by the Government; and/or (2) reports or other materials of the type that the Government itself distributes to the public under an agency program. "Government publications" shall, unless subject to exemption under applicable regulations, be printed according to the requirements of 48 CFR Subpart 8.8 even though the distribution of these reports and materials may be effectuated by the Subcontractor for the Government.</p>
NFS: 1852.223-74	<p><b>Drug- and Alcohol-free Workforce</b> (Mar 1996)</p> <p>(Applies in all subcontracts in which work is performed by an employee in a sensitive position, except subcontracts for commercial items [see FAR Parts 2 and 12].)</p>
NFS: 1852.225-70	<p><b>Export Licenses</b> (Feb 2000)</p> <p>Note 1: ALT 1 (Feb 2000) applies.</p> <p>Note 2: "Contracting Officer" means "Contracting Officer through the JPL Subcontracts Manager."</p> <p>Note 3: ¶(b) - where it says "insert name of NASA installation" insert "JPL."</p>
NFS: 1852.242-70	<p><b>Technical Direction</b> (Sep 1993)</p> <p>Note 1: "Contracting Officer Technical Representative (or COTR)" means "JPL Contract Technical Manager."</p> <p>Note 2: ¶(a) - In first sentence – Delete the words "who shall be specifically appointed by the Contracting Officer in writing in accordance with NASA FAR Supplement 1842.27" and replace with "in accordance with the Delegation of Authority Form."</p> <p>Note 3: ¶(a) - In last sentence - delete the words "in Section C of this contract" and replace with "of this subcontract."</p>
<b>Applicable for Subcontract Values Greater than \$3,000</b>	
52.223-18	<b>Encouraging Contractor Policies to Ban Text Messaging While Driving</b> (Aug 2011)
52.225-1	<p><b>Buy American Act – Supplies</b> (Feb 2009)</p> <p>Note 1: "Government" means "Government."</p>
<b>Applicable for Subcontract Values Greater than \$10,000</b>	
52.222-21	<b>Prohibition of Segregated Facilities</b> (Feb 1999)
52.222-26	<p><b>Equal Opportunity</b> (Mar 2007)</p> <p>Note 1: "Contracting Officer" means "Contracting Officer."</p> <p>Note 2: "Government" means "Government."</p>
52.222-40	<p><b>Notification of Employee Rights Under the National Labor Relations Act</b> (Dec 2010)</p> <p>(Applies in every subcontract that exceeds \$10,000 and will be performed wholly or partially in the United States, unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 3 of Executive Order 13496 of January 30, 2009.)</p>

Applicable for Subcontract Values Greater than \$15,000	
52.222-36	<b>Affirmative Action for Workers with Disabilities</b> (Oct 2010) <i>(Does not apply if both the performance of the work and the recruitment of workers will occur outside the United States, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.)</i>
Applicable for Subcontract Values of \$25,000 or More	
52.204-10	<b>Reporting Executive Compensation and First-Tier Subcontract Awards</b> (Jul 2010) <i>Note 1: Subcontractor shall report to the JPL Subcontracts Manager the information required by (c)(1) and the executive compensation required by (c)(3) unless the Subcontractor is exempt.</i> <i>Note 2: "Government" means "Government."</i> <i>Note 3: The subcontract or is notified that unless otherwise exempt, all reported information as required by the clause will be made public.</i> <i>Note 4: ¶(a) - "Definitions" apply to this clause.</i>
Applicable for Subcontract Values Greater than \$30,000	
52.209-6	<b>Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment</b> (Dec 2010) <i>(Does not apply to a subcontract for commercially available off-the-shelf items.)</i> <i>Note 1: "Government" means "Government."</i>
Applicable for Subcontract Values Greater than \$75,000	
52.211-15	<b>Defense Priority and Allocation Requirements</b> (Apr 2008)
Applicable for Subcontract Values of \$100,000 or More	
52.222-35	<b>Equal Opportunity for Veterans</b> (Sep 2010) <i>(Does not apply if work is performed outside the United States by employees recruited outside the U.S.)</i> <i>Note 1: "Government" means "Government."</i>
52.222-37	<b>Employment Reports on Veterans</b> (Sep 2010) <i>Note 1: "Government" means "Government."</i>
NFS: 1852.228-72	<b>Cross Waiver of Liability for Space Shuttle Services</b> (Sep 1993) <i>(Applicable only if the work under this subcontract is performed in support of "Protected Space Operations" [applicable to the Space Shuttle] as that term is defined in the clause.)</i> <i>Note 1: "Government" means "Government."</i>
NFS: 1852.228-76	<b>Cross Waiver of Liability for Space Station Activities</b> (Dec 1994) <i>(Applicable only if the work under this subcontract is performed in support of "Protected Space Operations" [relating to the Space Station] as that term is defined in the clause.)</i> <i>Note 1: "Government" means "Government."</i>
NFS: 1852.228-78	<b>Cross Waiver of Liability for NASA Expendable Launch Vehicle (ELV) Launches</b> (Sept 1993) <i>(Applicable only if the work under this subcontract is performed in support of agreements described in NASA FAR Supplement 1828.371(a) involving ELV launch Services.)</i> <i>Note 1: "Government" means "Government."</i>
NFS: 1852.244-70	<b>Geographic Participation in the Aerospace Program</b> (Apr 1985)
Applicable for Subcontract Values Greater than \$150,000	
52.203-6	<b>Restrictions on Subcontractor Sales to the Government</b> (Sep 2006) <i>Note 1: For the acquisition of commercial items, ALT I (Oct 1995) applies.</i>
52.203-7	<b>Anti-Kickback Procedures</b> (Oct 2010) <i>(Does not apply to commercial items.)</i> <i>Note 1: ¶(a) - "Definitions" apply to this clause.</i>

52.203-12	<b>Limitation on Payments to Influence Certain Federal Transactions</b> (Oct 2010) <i>Note 1: "Government" means "Government."</i>
52.215-2	<b>Audits and Records – Negotiation</b> (Oct 2010) <i>(Does not apply to the acquisition of commercial items exempted under FAR 15.403-1.)</i> <i>(ALT II [APR 1998] applies for cost-reimbursement contracts with State and local Governments, educational institutions, and other nonprofit organizations.)</i>  <i>Note 1: "Government" means "Government."</i> <i>Note 2: "Contracting Officer" means "Contracting Officer" and "JPL."</i>
52.215-14	<b>Integrity of Unit Prices</b> (Oct 2010) <i>(Does not apply to:</i> <ul style="list-style-type: none"> <li><i>a. construction or architect-engineer services under FAR Part 36;</i></li> <li><i>b. utility services under Part 41;</i></li> <li><i>c. service subcontracts where supplies are not required; and</i></li> <li><i>d. acquisitions of commercial items; and [e] subcontracts for petroleum products.)</i> </li></ul>
52.219-8	<b>Utilization of Small Business Concerns</b> (Jan 2011) <i>(Does not apply when:</i> <ul style="list-style-type: none"> <li><i>a. A personal services subcontract is contemplated [see FAR 37.104]; or</i></li> <li><i>b. The subcontract, together with all of its lower-tier subcontracts, will be performed entirely outside of the United States and its outlying areas.)</i> </li></ul>
52.222-4	<b>Contract Work Hours and Safety Standards Act – Overtime Compensation</b> (July 2005) <i>(Applies when the subcontract may require or involve the employment of laborers or mechanics)</i> <i>(Does not apply to subcontracts for:</i> <ul style="list-style-type: none"> <li><i>a. commercial items;</i></li> <li><i>b. transportation or the transmission of intelligence; and</i></li> <li><i>c. subcontracts to be performed outside the United States, Puerto Rico, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, and Outer Continental Shelf lands as defined in the Outer Continental Shelf Lands Act [43 U.S.C. 1331] [29 CFR 5.15].)</i>   <i>Note 1: "Government" means "the Government and JPL in support of its Government contractual obligations."</i>  <i>Note 2: "Contracting Officer" means "Contracting Officer through the JPL Subcontracts Manager."</i> </li></ul>
52.223-6	<b>Drug-free Workplace</b> (May 2001) <i>(Does not apply to subcontracts:</i> <ul style="list-style-type: none"> <li><i>a. At or below the simplified acquisition threshold; however, the requirements apply to all subcontracts of any value awarded to an individual;</i></li> <li><i>b. For the acquisition of commercial items (see FAR Part 12);</i></li> <li><i>c. Performed outside the United States and its outlying areas or any part of a subcontract performed outside the United States and its outlying areas;</i></li> <li><i>d. By law enforcement agencies, if the head of the law enforcement agency or designee involved determines that application of this subpart would be inappropriate in connection with the law enforcement agency's undercover operations; or</i></li> <li><i>e. Where application would be inconsistent with the international obligations of the United States or with the laws and regulations of a foreign country.)</i> </li></ul>
52.227-1	<b>Authorization and Consent</b> (Dec 2007) <i>(ALT I (Apr 1984) applies in all R&amp;D solicitations and subcontracts for which the primary purpose is R&amp;D work, except that this alternate shall not be used in construction and architect-engineer subcontracts, unless the subcontract calls exclusively for R&amp;D work.)</i> <i>(Does not apply when both complete performance and delivery are outside the United States.)</i>  <i>Note 1: ¶ (a) &amp; (a)(2) – "Government" means "Government."</i>
52.227-2	<b>Notice and Assistance Regarding Patent and Copyright Infringement</b> (Dec 2007) <i>Note 1: ¶ (a) – "Contracting Officer" means "Contracting Officer through the JPL Subcontracts Manager."</i> <i>Note 2: ¶ (b) – "Government" means "Government."</i> <i>Note 3: ¶ (b) – "Contracting Officer" means "Contracting Officer."</i>
52.242-13	<b>Bankruptcy</b> (Jul 1995) <i>Note 1: Upon the notification requirement per FAR 52.242-13, the Subcontractor shall to the maximum extent permitted by law: (1) continue to ensure that JPL has the right of access to all areas of the facilities and records involved in this subcontract; and (2) provide JPL access to</i>

	<p>subcontract documents delivered in place/held at the Subcontractor's facility or provide electronic copies thereof.</p> <p>The Subcontractor shall ensure that the trustee, receiver, or liquidator, as applicable, is aware of the requirements set forth immediately above.</p>
52.246-23	<p><b>Limitation of Liability</b> (Feb 1997)</p> <p>Note 1: ¶ (a)(1) - "Government" means JPL</p> <p>Note 2: ¶ (c) - The first two uses of "Government" mean "JPL or the Government." The third use of "Government" means "Government."</p>
52.246-24	<p><b>Limitation of Liability – High Value Items</b> (Feb 1997)</p> <p>Note 1: ¶ (a)(1) - "Government" means "JPL."</p> <p>Note 2: ¶ (c) - The first two uses of "Government" mean "JPL or the Government." The third use of "Government" means "Government."</p> <p>Note 3: ¶ (e)(3) - "Government" means "Government."</p>
52.246-25	<p><b>Limitation of Liability – Services</b> (Feb 1997)</p> <p>(Applies to subcontracts requiring the performance of services.)</p> <p>Note 1: ¶ (a)(1) - "Government" means "JPL."</p> <p>Note 2: ¶ (c) - The first two uses of "Government" mean "JPL or the Government;" the third use of "Government" means "Government."</p>
52.247-63	<p><b>Preference for U.S. Flag Air Carriers</b> (Jun 2003)</p> <p>(Applies whenever it is possible that U.S. Government-financed international air transportation of personnel [and their personal effects] or property will occur in the performance of the subcontract.)</p> <p>Note 1: "Government" means "Government."</p>
<b>Applicable for Subcontract Values Greater than \$500,000</b>	
NFS: 1852.223-75	<p><b>Major Breach of Safety and Security</b> (Feb 2002)</p> <p>Note: ALT I (Feb 2006) applies if the subcontract is with an educational or other nonprofit institution and contains the termination clause at <u>FAR 52.249-5</u> or if the subcontract is for commercial items and contains the clause at <u>FAR 52.212-4</u>.</p>
<b>Applicable for Subcontract Values Greater than \$550,000</b>	
NFS: 1852.219-74	<p><b>Use of Rural Area Small Businesses</b> (Sept 1990)</p> <p>(Applies when a subcontract is expected to exceed \$550,000 [\$1,000,000 for construction of public facility] unless the subcontract, together with all its lower-tier subcontracts, is to be performed entirely outside of any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the Trust Territory of the Pacific Islands.)</p>
<b>Applicable for Subcontract Values Greater than \$650,000</b>	
52.219-9	<p><b>Small Business Subcontracting Plan</b> (Jan 2011)</p> <p>(Applies:</p> <ul style="list-style-type: none"> <li>(a) to all subcontracting possibilities expected to exceed \$650,000 [\$1.5 million for construction of any public facility]</li> <li>(b) When subcontracting by sealed bidding rather than by negotiation, use with Alt 1 [Oct 2001]</li> <li>(c) When subcontracting by negotiation, and subcontracting plans are required with initial proposals as provided for in FAR 19.705-2(d), use with Alt II [Oct 2001]</li> </ul> <p>Note 1: JPL's approval of the Plan will be based on the requirements in JPL Form 0294 "Subcontracting Plan Requirements."</p>
NFS: 1852.219-75	<p><b>Small Business Subcontracting Reporting</b> (May 1999)</p> <p>(Applies to all subcontracts containing the clause at FAR 52.219-9, except for subcontracts covered by an approved commercial plan.)</p>
<b>Applicable for Subcontract Values Greater than \$700,000</b>	
52.215-10	<p><b>Price Reduction for Defective Cost or Pricing Data</b> (Aug 2011)</p>

52.215-11	<b>Price Reduction for Defective Certified Cost or Pricing Data – Modifications</b> (Aug 2011) <i>Note 1: ¶ (e) - “United States” means “United States through JPL.”</i> <i>Note 2: ¶ (e)(1) - “Government” means “Government.”</i>
52.215-12	<b>Subcontractor Certified Cost or Pricing Data</b> (Oct 2010)
52.215-13	<b>Subcontractor Certified Cost or Pricing Data – Modifications</b> (Oct 2010)
52.215-15	<b>Pension Adjustments and Asset Reversions</b> (Oct 2010)
52.215-18	<b>Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other than Pensions</b> (Jul 2005) <i>(Applies: if certified cost or pricing data is required or if any pre-award or post-award cost determination will be subject to FAR Part 31.)</i>
52.215-19	<b>Notification of Ownership Changes</b> (Oct 1997) <i>Note 1: “Administrative Contracting Officer” means “JPL Subcontracts Manager.”</i>
52.215-20	<b>Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data</b> (Oct 2010)
52.215-21	<b>Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data – Modifications</b> (Oct. 2010)
<b>Applicable for Subcontract Values Greater than \$5,000,000</b>	
52.203-13	<b>Contractor Code of Business Ethics and Conduct</b> (Apr 2010) <i>(Applies if the subcontract exceeds \$5,000,000 and has a performance period of more than 120 days)</i>  <i>Note 1: “Subcontract” means “subcontract.”</i> <i>Note 2: “Government” means “Government and JPL in support of its Government contractual obligations.”</i>